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Ho/Leg

OLC: 78-1313/4
27 December 1978

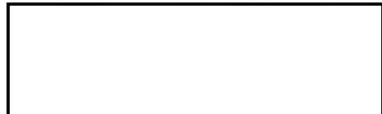
STAT MEMORANDUM FOR: GC
, OS

STAT FROM:
Chief, Legislation Staff
Office of Legislative Counsel

SUBJECT: Polygraph Legislation

In follow-up to my Memorandum for the Record dated 21 December 1978 (OLC 78-1313/3), I am forwarding to you the polygraph bill as it was introduced in the 95th Congress and an amendment submitted by the Department of Justice to OMB on which the Agency coordinated. Since we submitted our comments to OMB on Justice's amendment in April 1978, I want to be sure the attached language is what we want to be included if a new bill is introduced in the 96th Congress. We hope to be in contact with the Senate Judiciary Committee staffer handling the legislation before it is reintroduced to make our concerns known. Therefore, I would appreciate your comments on the attached language by Wednesday, 10 January.

STAT



Attachment

Dist.:
Orig-Addressees
1-OLC Subject
1-OLC Chrono
OLC:GMC:mlg (27 Dec 1978)

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ADMINISTRATIVE-INTERNAL USE ONLY

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OLC: 78-1313/3
21 December 1978

MEMORANDUM FOR THE RECORD

SUBJECT: Polygraph Bill (S. 1845)

1. On 20 December 1978, the undersigned called David Barrett of the Department of Justice regarding subject bill, in an effort to determine where things stood in connection with an effort by Justice to assemble a coordinated Administration position.

2. Barrett said that Justice's effort had not worked out, that there was no coordinated Administration position at this point, and that he had no definite information on plans for reintroduction of the bill in the 96th Congress.

3. Marsha Atcheson, Assistant Counsel on the staff of the Senate Judiciary Subcommittee on the Constitution is the key staff person. We will coordinate changes desired in the bill with OGC and the Office of Security and contact her directly so that we can make our case prior to reintroduction.

STAT

Chief, Legislation Staff
Office of Legislative Counsel

Distribution:

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OLC:GMC:rv (21 Dec 1978)

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ADMINISTRATIVE-INTERNAL USE ONLY

95TH CONGRESS
1ST SESSION

S. 1845

IN THE SENATE OF THE UNITED STATES

JULY 12 (legislative day, May 18), 1977

Mr. BAXTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect the rights of individuals guaranteed by the Constitution of the United States and to prevent unwarranted invasion of their privacy by prohibiting the use of polygraph type equipment for certain purposes.

1 *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*
2 That (a) chapter 13 of title 18, United States Code, is
3 amended by adding at the end thereof the following new
4 section:

5 6 **“§ 247. Polygraph testing in connection with employment**
7 7 “(a) For purposes of this section—

8 8 “(1) ‘polygraph test’ means any examination ad-
9 9 ministered to an individual by mechanical, electrical, or

1 chemical means to measure or otherwise examine the
2 veracity or truthfulness of such individual; and

3 " (2) 'employee organizations' includes any brother-
4 hood, council, federation, organization, union, or profes-
5 sional organization made up in whole or in part of em-
6 ployees and which has as one of its purposes dealing with
7 departments, agencies, commissions, independent agen-
8 cies of the United States, or with businesses and indus-
9 tries engaged in or affecting interstate commerce, con-
10 cerning the conditions and terms of employment of such
11 employees.

12 *See Insert A*
12 " (b) (1) Any officer or employee of the United States
13 or any person acting for or on behalf of the United States
14 who requires or requests any officer or employee of the
15 United States, or any individual seeking employment as an
16 officer or employee of the United States, to take any
17 polygraph test in connection with his or her services or duties
18 as an officer or employee, or in connection with such individ-
19 ual's application or consideration for employment shall be
20 subject to the penalties and provisions of subsection (c) of
21 this section, except that section 247 (b) (1) shall not apply
22 to officers or employees of the Central Intelligence Agency
23 or the National Security Agency.

24 " (2) Any person engaged in any business or other
See Insert B

1 activity in or affecting interstate commerce, or any individual
2 acting under the authority of such person who—

3 (A) requires or requests any individual seeking
4 employment in connection with such business or activity
5 to take any polygraph test in connection with his
6 application or consideration for employment; or who
7 accepts or uses the results of any polygraph test in
8 connection with such application; or

9 (B) requires or requests any individual employed
10 by such person to take any polygraph test in connection
11 with his or her services or duties as an employee; or
12 who accepts or uses the results of any polygraph test,
13 unless the employee freely and expressly requests to
14 take such a test and the request is not a product of
15 coercion or intimidation by the employer;

16 shall be subject to the penalties and provisions of subsection
17 (c) of this section.

18 (c) (1) Whoever willfully and knowingly violates
19 subsection (b) of this section shall be guilty of a mis-
20 demeanor and shall be punished by a fine not exceeding
21 \$1,000, or by imprisonment not exceeding one year, or
22 both.

23 (2) Whoever violates subsection (b) of this section

1 shall be subject to a civil penalty not exceeding \$10,000,
2 to be payable to the United States.

3 "(3) Upon violation of subsection (b) of this section,
4 any employee or officer of the United States, or any person
5 seeking employment in the executive branch of the United
6 States Government, or any individual seeking to establish
7 civil service status or eligibility for employment in the
8 United States Government, or any individual seeking
9 employment in connection with any business or activity
10 engaged in or affecting interstate commerce, or any individual
11 employed by a person engaged in such business or
12 activity, who is aggrieved by this violation of subsection (b)
13 of this section, may bring a civil action in his or her own
14 behalf or in behalf of himself or herself and others similarly
15 situated, against the offending officer, employee, or person
16 in the United States district court.

17 "The district courts of the United States shall have
18 jurisdiction to try and determine such civil action irrespec-
19 tive of the actuality or amount of pecuniary injury done or
20 threatened, and without regard to whether the aggrieved
21 party shall have exhausted any administrative remedies
22 that may be provided by law, and to issue such restraining
23 order, interlocutory injunction, permanent injunction, or
24 mandatory injunction, or enter such other judgment or
25 decree as may be necessary or appropriate to prevent the

1 threatened violation, or to afford the plaintiff and others
2 similarly situated complete relief against the consequences
3 of the violation.

4 "With the written consent of any person aggrieved by
5 a violation of subsection (b) of this section, any employee
6 organization may bring such action on behalf of any such
7 person, or may intervene in such action.".

8 (b) The analysis of chapter 13 of such title is amended
9 by adding at the end thereof the following new item:
"Sec. 247. Polygraph testing in connection with employment."

10 SEC. 2. The amendments made by this Act shall become
11 effective thirty days after the date of enactment.

Insert A

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change section 247(b)(1) to read:

"(b)(1) No officer or employee of the United States nor any person acting for or on behalf of the United States shall require or request any officer or employee of the United States, or any individual seeking employment as an officer or employee of the United States, to take any polygraph test in connection with his or her services or duties as an officer or employee, or in connection with such individual's application or consideration for employment, except that such polygraph tests may be administered --

(A) in the course of an investigation by a law enforcement agency of an alleged criminal act committed by an officer or employee of the United States, provided that--

(i) there is probable cause to believe that such officer or employee has committed a criminal act;

(ii) such officer or employee freely and voluntarily consents to the polygraph test after being informed of the nature of the allegations against him, his privilege against self-incrimination, and his right to counsel; and

(iii) any such employee's refusal to submit to a polygraph test may not be used in any manner against him, either in the criminal investigation or in future personnel action, and no record of the polygraph test or the refusal to submit to it may be maintained outside law enforcement files; and

(B) to officers or employees of, persons assigned or detailed to, or affiliated with, any agency or department of the United States, as well as applicants or candidates for such positions or affiliations, if such persons actually perform or would perform national security, intelligence, or counterintelligence functions or support or security duties related to such functions, and to contractors ^{and employees of contractors} selected by any such agency or department to perform such functions or duties."

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Insert B

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change section 247(b) (2) to read:

"(2) Except as permitted by subsection (b) (1) (B) of this section, no person engaged in any activity in or affecting interstate commerce, and no individual acting under the authority of such person, shall--

(A) require or request any individual seeking employment in connection with such business or activity to take any polygraph test in connection with his application or consideration for employment; or shall accept or use the results of any polygraph test in connection with such application; or

(B) require or request any individual employed by such person to take any polygraph test in connection with his or her services or duties as an employee; or shall accept or use the results of any polygraph test, unless the employee freely and expressly requests to take such a test and the request is not a product of coercion or intimidation by the employer."

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